IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED
MAY 2 9 2008
MICHAEL N. MILBY, CLERK OF COURT

ERIK ADAM IBARRA,	§	
SEAN CARLOS IBARRA,	§	
APRIL WALKER,	§	
LLOYD HENDERSON and	§	
LORETTA HENDERSON	§	
Plaintiffs	§	
	§	
V.	§	CIVIL ACTION NO. 08-1709
HARRIS COUNTY,	§	JURY TRIAL DEMANDED
SHERIFF THOMAS, et al	§	
DEFENDANTS	§	
	§	

PLAINTIFFS' ORIGINAL COMPLAINT AND AND JURY DEMAND

COME NOW PLAINTIFFS, Sean Carlos Ibarra, Erik Adam Ibarra and April Walker Lloyd Henderson, and Loretta Henderson, and for cause, would respectfully show the Court as follows:

I. PARTIES

1. Plaintiffs, Sean Carlos Ibarra, is a resident of Harris County, Texas.
2. Plaintiffs, Erik Adam Ibarra, is a resident of Harris County, Texas.
3. Plaintiffs April Walker is a resident of Harris County, Texas.
4. Plaintiffs Lloyd Henderson is a resident of Harris County, Texas.
5. Plaintiffs Loretta Henderson is a resident of Harris County, Texas.

6. Defendant, Harris County, Texas may be served with process by serving the County Judge Ed Emmett. The clerk is requested to issue citation and that service of process be effectuated.
7. Defendant, Harris County Sheriff's Department may be served by process by serving Sheriff Thomas at 1200 Baker St, Houston, Texas, 77002.
8. Defendant, Harris County Sheriff Tommy Thomas, in his individual and in his official capacity, may be served with process at 1200 Baker St, Houston, Texas, 77002. The clerk is requested to issue citation and that service of process be effectuated.
9. Defendant Corey Alexander, in his individual and official capacity, may be served with process at 1200 Baker St, Houston, Texas, 77002. The clerk is requested to issue citation and that service of process be effectuated.
10. Unknown Defendant, Deputy of Sheriff Thomas, in his individual and official capacity, who participated in the unlawful arrest of April Walker.
11. Unknown Defendants, Deputies of Sheriff Thomas, in his individual and official capacity, who illegally conducted surveillance of Plaintiffs.
12. Unknown Defendant, employee of Sheriff Thomas, who called and threatened Plaintiffs April Walker's employment.
13. Defendant Juan Jorge, Major Deputy of Sheriff Thomas, in his individual and official capacity, may be served with process at 1200 Baker St, Houston, Texas, 77002.

14. Defendant Dan Billingsley, Chief Deputy of Sheriff Thomas, in his individual and official capacity, may be served with process at 1200 Baker St, Houston, Texas, 77002. The clerk is requested to issue citation and that service of process be effectuated.

15. Defendant Kenneth Magidson, Harris County District Attorney, in his individual capacity, who may be served with process at 1201 Franklin, Houston, Texas. The clerk is requested to issue citation and that service of process be effectuated.

16. Defendant Joe Owmby, Harris County employee, who may be served with process at 1201 Franklin, Houston, Texas 77002. The clerk is requested to issue citation and that service of process be effectuated.

17. Defendant Michael Stafford, Harris County Attorney, in his individual and official capacity, may be served with process at the Harris County Attorneys' Office at 1019 Congress, 15th Floor, Houston, Texas 77002. The clerk is requested to issue citation and that service of process be effectuated.

18. Defendant Anderson is a Harris County Sheriff's Deputy in his individual and official capacity, may be served with process at 1200 Baker St, Houston, Texas, 77002. The clerk is requested to issue citation and that service of process be effectuated.

19. Defendant D.R.Warren is a Harris County Sheriff's Deputy in his individual and official capacity, may be served with process at 1200 Baker

St, Houston, Texas, 77002. The clerk is requested to issue citation and that service of process be effectuated.

II. FACTUAL BACKGROUND

1. At approximately 2:30 P.M., on January 4, 2002, Sheriff Thomas' Deputies assigned to the Harris County Organized Crime/ Narcotics Task Force (hereinafter "Organized Crime Unit (OC)" or "Task Force") wrongfully arrested two brothers Sean Ibarra and Erik Ibarra. The Harris County District Attorney and his assistants conspired with the Sheriff and his deputies to violate the Ibarra brothers' civil rights.

2. The Ibarra brothers were charged and forced to go to trial on bogus charges. At the criminal trial, the Ibarra brothers prevailed. The Harris County District Attorney's office conspired with the Sheriff and his deputies to intimidate and coerce the Ibarra brothers into not filing civil rights complaints.

3. Subsequent to their criminal trials, the Ibarra brothers brought a civil rights case against Sheriff Thomas, his deputies, the District Attorney and Harris County.

4. After sending complaints to Harris County and Sheriff Thomas indicating their rights had been violated, the Sheriff and his department in conspiracy began a program of harassment in retaliation for the Ibarra brothers filing civil rights complaints. Specifically, Sheriff Thomas employed his 'Super Secret Squad" to illegally spy upon the Ibarras. The Sheriff has now admitted his

"super secret squad" conducted surveillance "for many days" on the Ibarras while their civil rights case was pending.

5. Harris County has admitted publicly they have a practice of employing its law enforcement officers to spy upon citizens who have sued the Sheriff and the County or have filed civil rights complaints. County Attorney Michael Stafford was involved in spying incidents which he has admitted were done at his direction. Upon information and belief, Stafford conspired with Sheriff Thomas and his deputies in spying upon the Ibarras.

6. Upon information and belief, the Sheriff and his deputies also employed illegal wiretaps in violation of state and federal law to spy upon the Ibarras and others similarly situated. Said acts independently violated the Ibarras civil rights.

7. Spying upon citizens in retaliation for the filing of a civil rights complaint is a civil right violation itself. Said acts violate the First, Fourth and Fourteenth Amendments to the U.S. Constitution. As such, Plaintiffs bring this suit under section 1983.

8. The Sheriff and his deputies in conspiracy with other Harris County officials have a policy and practice of retaliation against citizens who file civil rights complaints. While the Ibarra lawsuit was pending, the Sheriff and Harris County employees and officials conspired to violate other citizen's civil rights using the same policy and practice employed against the Ibarras. On January 1, 2008, Plaintiffs April Walker, who is a municipal court judge, was viciously

attacked by two Harris County Sheriff's Deputies. Ms. Walker is also a law professor at Texas Southern University. Upon information and belief, one of the deputies was Corey Alexander. The other deputy remains unidentified.

9. The Sheriff and his deputies have sought to traumatize a woman who had already experienced emotional loss. On December 20, 2007, Ms. Walker's husband, Tommy Boston, died. On New Year's Eve, Ms. Walker was returning home with her children from a family gathering. As she turned onto her street in her subdivision, some individuals had blocked the street with a card table. Ms. Walker told the individuals to move out of the street so that her car could pass. Ms. Walker told the individuals she was going home to call the police.

10. As Ms. Walker drove home, an individual chased her home on an ATV four-wheeler. The ATV lost control at Ms. Walker's drive way scaring her and her children.

11. Ms. Walker called the police and reported what had happened. Ms. Walker, a widowed woman with her two children with her, at home in the middle of the night, sought the protection of Harris County's law enforcement. Instead of getting the protection she deserved, Ms. Walker was the victim of an even greater terror from the Harris County Sheriff's Department.

12. Two hours after calling the Sheriff's Department, one of Sheriff Thomas' men showed up at the door to arrest Ms. Walker. The deputy claimed Ms. Walker was impersonating a public servant. Ms. Walker explained that she was a municipal court judge and was therefore a "public servant."

13. Ms. Walker told the deputy to return in the day time if he wanted to pursue such an investigation. Again, Ms. Walker called 911 to report the deputies' behavior. Again, 911 turned out to be the number of terror. Another deputy arrived who then proceeded to invade Ms. Walker's home and throw her down on the floor in the middle of her living room in front of her children.

14. Knowing his actions were illegal, the deputy even said that he had to arrest Ms. Walker or she would file a complaint against him. The deputy threatened to arrest Ms. Walker's son if she didn't shut up. As a sign of desperation, the deputy broke Ms. Walker's municipal court badge in half leaving behind only her signature and picture. The Sheriff's Department has a custom, practice and pattern of destroying citizen's property without a warrant. Such behavior was repeatedly demonstrated in the Ibarra civil rights trial.

15. Ms. Walker was falsely charged with impersonating a public servant when she is in fact a public servant. All charges against her were dismissed on January 3, 2008 by Joe Owmby when it was demonstrated that Ms. Walker was in fact a public servant.

16. Ms. Walker then wrote to Sheriff Thomas and complained about the violations of her civil rights. Ms. Walker followed the published procedures of the Sheriff.

17. After filing her complaint with Sheriff Thomas, Ms Walker's employer was contacted and her employment was threatened at TSU. Ms. Walker was threatened that if she did not drop the complaint against the deputies, then Ms.

Walker would again be charged with impersonating a public servant. Ms. Walker questioned this because as a municipal court magistrate, she is a "public servant." Upon information and belief, this is a consistent pattern of retaliation. In the Ibarra civil rights case, it was demonstrated that the Sheriff and his deputies engaged in retaliation against citizens' who complain about civil rights violations.

18. After Ms. Walker was threatened at work, she then received a subpoena from Joe Owmby requiring her to appear before a grand jury in regards to the New Year's Eve incident.

19. Upon information and belief, the Sheriff and the Harris County District Attorney and their employees are again engaging in a conspiracy to harass and intimidate citizens' who file civil rights complaints. Upon information and belief, Joe Owmby is again engaged in helping the Sheriff and his deputies in stopping a civil rights complaint.

20. Joe Owmby oversees the investigation of the police. He is the Chief of the Police Integrity Division. According to Chuck Rosenthal, Don Smyth and Joe Owmby's previous testimony in the Ibarra case, Mr. Owmby would be charged with investigating the deputies. It would be another division entirely that would investigate any allegations against Ms. Walker. Again, the District Attorney and his assistants are conspiring with the Sheriff and his deputies to intimidate and harass citizens who file civil rights complaints. Such behavior is a pattern and practice that was demonstrated in the Ibarra civil rights case.

21. Upon information and belief, since filing a civil rights complaint, Ms. Walker and her family have been spied upon by the Sheriff's deputies.

22. Upon information and belief, Ken Magidson and Joe Owmby have continued the Harris County tradition and joined the conspiracy to falsify evidence against Ms. Walker and to destroy evidence and to further the conspiracy to violate the rights of Plaintiffs the under the laws of the State of Texas and constituted a violation of the Civil Rights of Plaintiffs' guaranteed under the laws of the Constitution of the United States.

23. Upon information, Ken Magidson and Joe Owmby joined the conspiracy to retaliate against Ms .Walker in violation of the laws of the state of Texas.

24. The District Attorney and the Sheriff have a policy and practice to condone and encourage deputies and assistant district attorneys to lie and falsify testimony in violation a violation of the Civil Rights of Plaintiffs' guaranteed under the laws of the Constitution of the United States.

25. After wrongfully being incarcerated, Ms. Walker had to hire attorneys to defend against the baseless charges brought by Defendants.

26. Ms. Walker's charge was summarily dismissed. The Court records indicate their was no probable cause for the charges. It is undisputed that the Defendants lacked probable cause to search, seize or arrest her.

27. Like Ms. Walker, Mr. Lloyd Henderson called the Sheriff's Department on October 19, 2007 to report a burglary of his business. When the

deputies came to his business, one deputy became rude and belligerent and physically threw Mr. Henderson on the ground and falsely arrested him. The other deputy did nothing to stop his fellow deputy. Mr. Henderson was harmed as a result of this physical assault.

28. Mr. Henderson and his wife complained about their mistreatment and the violations of their civil rights. The Sheriff's Department again refused to take any action.

29. The Deputies actions were so outrageous, that the FBI agent investigating the matter said that the case of civil rights violations was a "slam-dunk." In fact, the FBI investigating agent told the Hendersons to contact the undersigned and pursue a lawsuit. This same agent had been put-off by the Sheriff's Department in the Ibarra case.

30. It is unfortunate that citizens can no longer rely upon their local institutions for protection. Our history is repeating itself when minorities are being attacked by their own government and retaliated against for insisting upon the same civil rights that are afforded to the rich and powerful. In Harris County, it is evident that friends of the power-elite, including the Sheriff and the other County officials, are accorded rights unavailable to blacks, Hispanics and the poor. Such a pattern of discrimination is cancer upon this County and can only be addressed by the Federal courts in a civil rights proceeding.

31. After complaining about the violations of their civil rights, again the Hendersons were harassed and an attempt was made to intimidate them.

32. The Defendants were acting individually, and were acting in the course and scope of their employment with the Harris County Sheriff's Department. Defendants acted under color of law to deprive Plaintiffs of their rights under the United States Constitution, the Texas Constitution, the common law of Texas, and the statutes enacted therein to enforce said laws.

33. Based upon information and belief, the Sheriff's Department has a policy of conducting warrantless searches and seizures in violation of constitutional protections and said custom and practices are condoned by the Department.

34. Upon information and belief, the Sheriff's Department has a policy, custom or practice of taking without warrant, property, such as video evidence or pictures, or identification/badges and destroying same.

35. Defendants, individually and in their official capacity, conspired against Plaintiffs to cause Plaintiffs harm. Plaintiffs seek damages, both actual and compensatory for Defendant's trespass, assault and battery, intentional infliction of emotional distress, wrongful arrest, false imprisonment, and malicious prosecution.

36. Plaintiffs lost time he could have been employed while in jail and while attending court for which he seeks restitution from Defendants.

37. Plaintiffs suffered physical pain and mental anguish as a result of Defendants actions and in reasonable probability will sustain future mental anguish damages.

38. Ms. Walker was assaulted by Defendants and seeks actual and exemplary damages to be determined by the trier of fact.

39. This claim is also brought pursuant to 42 U.S.C. sec. 1983 and 1988. Defendants, individually and in their official capacity, conspired against Plaintiffs to cause Plaintiffs harm. Plaintiffs seek damages, both actual and compensatory for Defendant's actions in forcibly entering and searching Plaintiffs' house which was done without a warrant and without probable cause. The actions of Defendants deprived Plaintiffs of his right to be free from unlawful search and seizure and free from cruel and unusual punishment in violation of the Fourth and Eighth Amendments to the United States Constitution.

40. Further, Ms. Walker possessed a certain amount of respect in the community that he lost as a result of the wrongful arrest and false criminal charges brought against him. Ms. Walker seeks damages to his reputation that was caused by Defendants' malicious actions.

41. Mr. Henderson and his wife possessed a certain amount of respect in the community that he lost as a result of the wrongful arrest brought against him. The Hendersons seeks damages to their reputation that was caused by Defendants' malicious actions.

42. Defendants, individually and acting in concert, conspired to deny Plaintiffs their First Amendment Rights under the United States Constitution. Plaintiffs have a right to complain and file civil rights complaints. In fact, the Sheriff tells the public to file such complaints. But this invitation is a fraud. The

Sheriff actually uses the information to retaliate. Defendants actions and by policy and custom, the Defendants have trampled upon Plaintiffs' rights as secured under the Constitution via the Fourteenth Amendment.

43. Further, Defendants conspired to violate Plaintiffs' rights and to harm Plaintiffs. Further, Defendants, individually and in concert, conspired to destroy evidence in violation of the laws of the United States and the State of Texas. Said efforts by Defendants constitute obstruction of justice under the United States Code.

44. Further, Defendants, in violation of the laws of the United States and the State of Texas conspired to intimidate witnesses. Defendants are doing it again to Ms. Walker the same as they did in the Ibarra case.

45. Upon learning of the deputies actions, the Sheriff's Department nor the District Attorney's office again did not even investigate the incident. Instead, the Harris County officials "circled the wagons" conspiring to retaliate against the citizen's making the complaint.

46. The Sheriff does not discipline his employees but rather condones his deputies behavior.

47. The Sheriff's Department, lacks proper training in First Amendment rights, Fourth Amendment search and seizure procedures and preservation of evidence.

48. The Sheriff and the Sheriff's Department was negligent in its hiring, training and supervision of these deputies.

49. The Sheriff's Department refuses to properly investigate deputies for this gross violation of Plaintiffs' rights and refuses to discipline or prosecute the deputies for their behavior.

50. The actions of the deputies were conducted with the express and/or implied authority of the Sheriff, the ultimate decision maker for the Sheriff's Department.

51. At all times material hereto, Defendants were acting under color of state and local law when they deprived Plaintiffs of their rights, privileges and/or immunities secured by law.

52. At all times material hereto, Defendants were acting pursuant to an express and/or implied policy of the Sheriff's Department.

53. Defendants' acts in violating the civil rights of Plaintiffs were the proximate and/or producing cause of Plaintiffs' damages.

54. Ms Walker asserts that the her arrest by Defendants was not made in good faith and that no reasonable person in Defendants' position could have thought the facts were such that they justified the Defendants' acts in arresting Plaintiffs. In this regard, the arrest were effectuated without a warrant and without probable cause that Plaintiffs was guilty of a felony or had otherwise breached the public peace or had threatened or were about to commit some offense against the law.

55. The actions of the individual Defendants were plainly obvious result of certain policies, customs, and practices followed by the Sheriff's Department or

the Department's deliberate indifference to those practices. Each of the official policies, customs, and practices, and the City's deliberate indifference to them, was a moving force which caused and resulted in the illegal entry and warrantless search of the residence, the false arrest and imprisonment of Plaintiffs and the use of excessive force against Plaintiffs. Accordingly, Harris County and the Sheriff's Department is liable for all damages caused to Plaintiffs.

56. The Sheriff's failure to respond or to take any steps to reprimand or otherwise admit that the deputies conduct was in error or to make changes in order to prevent recurring violations evidences the Departments preexisting policy of deliberate indifference to the dangerous recklessness of its deputies.

57. Given that so many Defendants conspired to violate Plaintiffs' rights in so many ways, Plaintiffs asserts that a fact finder may infer that the Defendants concert of action constitutes a policy or custom to violate the rights of Plaintiffs.

58. Further, given that the constitutional violation was so egregious it could only occur against a background of silence and a failure to punish said misconduct. Having committed such egregious acts as to amount to armed robbery and felonious burglary without fear of punishment or prosecution establishes a policy that supported the Defendants' actions.

59. Further, Plaintiffs will seek to establish that Defendants acted with malice such that they exhibited a gross indifference or reckless disregard for the rights of others as to amount to a wanton and willful action, knowingly and unreasonably done.

60. As in the Ibarra case in which the Sheriff's deputies pulled Sean Ibarra's hair and telling him "welcome to my world mother fucker" in front of other deputies in the sheriff's own building, the deputies as to Ms. Walker engaged in similar vicious behavior towards her. This pattern of behavior establishes a policy of support for the Defendants' actions. All actions are done without any investigation, without any discipline or prosecution and without any disapproval by the decision maker, the Sheriff.

61. The Defendants conspiracy to maliciously prosecute Ms. Walker.

62. Defendants forcibly entered Ms Walker's residence and beat her just like they did to the Ibarras.

63. Said actions could not have happened in the absence of a policy or custom in the Sheriff's Department that ratified said acts.

III. DAMAGES

As a result of the actions and circumstances described above, Plaintiffs have suffered injuries and damages but not limited to one or more of the following:

a. Past and future physical injuries and impairment;

b. Past and future pain and suffering;

c. Past and future mental anguish and humiliation;

d. Loss of time;

e. Physical discomfort and/or inconvenience;

f. Past and future economic losses including as applicable; bail bond fees, legal fees in connection with representation for the wrongful charges asserted against them.

IV. INJUNCTIVE RELIEF

Plaintiffs, upon the trial of this matter, prays for injunctive relief such that these deputies will be investigated and/or disciplined and/or trained properly. In addition, Plaintiffs seek injunctive relief as to the Sheriff and the Department such that they will establish polices and procedures to adequately investigate said behavior, properly train its deputies, properly supervise its deputies and change its polices and procedures to prevent another such occurrence.

Upon success of the merits of this action, Plaintiffs will establish that the continued violation of persons rights by the Defendants in maintaining their current practices will lead to no adequate remedy at law and create imminent and irreparable harm in that it is impossible to truly measure the value of a First Amendment freedom of expression or the right to redress grievance to the government and thus the harm cannot be undone by monetary damages. See e.g. Elrod v. Burns, 427 U.S. 347 (1976). Thus, any remedy at law is illusory because damages are not subject to exact calculation and the loss of said freedoms is priceless and that effective relief cannot be obtained without the necessity of filing hundreds or even thousands of individual lawsuits if that was even possible given the calculation of the expected costs of the litigation of each case with its expected benefit for each Plaintiffs. The injury suffered by Plaintiffs and all similarly situated persons outweighs any injury that would be sustained by the Defendant(s) as a result of any entry of injunctive relief. Finally, the granting of the injunctive relief will have a positive effect on public policy and the public interest in that it will give rise to greater compliance with citizens' freedoms while at the same time eliminating the possibility for the unwarranted destruction of evidence. The public interest will not be harmed in protecting the First Amendment by enjoining Defendants from retaliating against citizens who complain about civil rights violations. Plaintiffs pray for injunctive relief stop the illegal spying upon citizens who file civil rights complaints.

Pursuant to the traditional principles of equity exercised by the English Court of Chancery in 1789 as adopted by the United States of America, Plaintiffs pray for injunctive relief to prohibit Defendants from violating the Constitutional and statutory rights guaranteed to all citizens and Plaintiffs pray for continuing oversight and compliance review until this Court is assured of compliance.

V. PUNITIVE DAMAGES

Defendants conduct described above is the type of conduct for which the law allows the assessment of exemplary damages. Accordingly, Plaintiffs seeks punitive damages in an amount to be determined by the trier of fact.

VI. ATTORNEY FEES

It was necessary for Plaintiffs to hire an attorney to prosecute this claim. Upon judgment, Plaintiffs are entitled to an award of attorney fees and cost.

VII. JURY DEMAND

Plaintiffs hereby requests a trial by jury.

VIII. PRAYER

Plaintiffs respectfully requests that Defendants be cited to appear and answer and that upon final trial of this cause Plaintiffs have judgment of and from Defendants, jointly and severally, as follows:

1. actual and consequential damages;
2. reputation damages;
3. exemplary damages;
4. attorney fees and costs of court;
5. pre and post judgment interest;
6. And such further and other relief at law or in equity to which Plaintiffs may be justly entitled.

Respectfully submitted

LLOYD KELLEY & ASSOCIATES

By: ____________________

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